

266

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1924

No. 143

UNITED STATES BEDDING COMPANY, APPELLANT

vs.
THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FRANK VICKERS & SON

(20,796)

On this preliminary statement - not certified
to court of appeals to see. There have no
other.

(29,798)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 486

UNITED STATES BEDDING COMPANY, APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

INDEX

	Original	Print
Record from the Court of Claims.....	1	1
History of proceedings.....	1	1
Amended petition.....	2	1
Exhibits A and B to Petition—Notices to dealers in and users of cotton linters, May 27 and July 10, 1918....	6	3
General demurrer to amended petition.....	10	5
Submission of case on demurrer.....	10	5
Order sustaining demurrer and dismissing petition.....	11	5
Memorandum	11	5
Proceedings after entry of judgment.....	12	6
Petition for and order allowing appeal.....	12	6
Clerk's certificate.....	13	6

[fol. 1] **COURT OF CLAIMS OF THE UNITED STATES**

No. B-435

UNITED STATES BEDDING CO., a Corporation,

vs.

THE UNITED STATES

I. HISTORY OF PROCEEDINGS

On December 14, 1922, the plaintiff filed its original petition.

On January 3, 1923, the defendant filed a general demurrer to said petition.

On February 5, 1923, the demurrer was submitted without argument.

On February 19, 1923, the court filed an order sustaining said demurrer and dismissing the plaintiff's petition.

On March 7, 1923, the plaintiff filed a motion for a new trial and asked leave to file an amended petition.

On March 12, 1923, the court filed an order allowing amended petition to be filed.

On March 12, 1923, the plaintiff filed its amended petition. Said amended petition is as follows:

[fol. 2] II. AMENDED PETITION—Filed March 12, 1923

The claimant, United States Bedding Company, respectfully represents:

1. That it is a corporation duly created and existing under the laws of the State of Minnesota engaged in the manufacturing of mattresses and in buying and disposing of cotton linters.

[fol. 3] 2. That on May 27, 1918, claimant had on hand 700 bales of cotton linters, 373,612 pounds, and on that day the United States through the War Industries Board issued a compulsory order requisitioning all existing stock of linters, stating "Therefore it becomes imperative that all existing stocks and all future production of linters be requisitioned for explosive purposes," and claimant and all others were forbidden to sell to any one but the Government. ✓

2A. That the said compulsory order is filed herewith as Exhibit "A" dated May 27, 1918; that the questionnaire attached thereto was fully answered by the claimant setting out the amount of linters the claimant had on hand; that on July 10, 1918, the Government issued another regulation which is filed herewith as Exhibit "B" under which the Government inspected the said linters of the plaintiff and offered to buy them but the plaintiff refused to accept the price fixed thereby and the Government officers thereupon forbid the plaintiff to dispose of or use the said linters but to hold the same ✓

and the Ordnance Department then began exercising the right to commandeer by which the owner was to be given an opportunity to establish the actual value of the linters but before this commandeering process was completed the Armistice was signed and the Government did not then take the linters.

3. That the United States had duly authorized and appointed Du Pont American Industries, Inc., as agent to take in and issue orders for all linters so requisitioned and said Du Pont American Industries, Inc., as such agent for the United States requisitioned 700 bales of linters from the claimant and inspected and classified [fol. 4] same as Class "C" and directed the same to be consigned to the U. S. A. War Department, for which the Government under the compulsory order fixed the price at \$5.50 per hundredweight f. o. b. point of production as fixed and required by the said compulsory order of May 27, 1918, only allowing the claimant \$20,548.60 for the linters.

4. That the claimant refused the price so fixed which was far less than the cost of the linters as by said compulsory order it was required to deliver the linters or hold same to be commandeered and it would have to take its chances of being reimbursed for its loss under the Act of March 2, 1919, entitled "An Act to provide relief in the cases of contracts connected with the prosecution of the War and for other purposes" for a fair and equitable settlement and accordingly refused to ship or deliver the said linters and held same to be commandeered. The said 700 bales of cotton linters had cost the claimant \$32,392.78, without any profit on the linters so withdrawn from sale by the United States; that the withdrawal from sale of the said linters by the United States under the said compulsory order, requisitioned and commandeering process above was a taking of same by the Government without agreement and without the consent of claimant and over its protest.

5. That but for said orders and regulations of the United States, claimant could and would, have sold said linters to private parties for \$32,392.78 or more in July or August, 1918; that on November, 1918, the United States issued an order or regulation releasing all linters held under the said prior orders and regulations, thus flooding [fol. 5] the market so that claimant could not sell said linters at 5½¢ per lb. or any other price; that plaintiff is entitled to recover said \$11,744.18 with interest from November, 1918.

6. That the claimant is sole owner of the claim set forth in this petition, no assignment or transfer of the same of any part thereof or interest therein has been made. Claimant is justly entitled to receive and recover from the United States of America for and on account of the violation of the said agreement the sum of \$11,744.18 after allowing all credits and set-offs. The claimant has at all times borne true allegiance to the Government of the United States and has not in any way aided, abetted or given encouragement to its enemies. The claimant believes the facts stated in this petition to be true.

32,392.78

Wherefore, Claimant prays judgment against the United States of America in the sum of \$11,744.18 and for such other and further relief as this Honorable Court may grant both at law and in equity, in the premises.

United States Bedding Company, By Raymond M. Hudson.

Affidavit of Raymond M. Hudson to above paper omitted in printing.

[fol. 6] EXHIBIT "A" TO AMENDED PETITION

(Copy)

War Industries Board

B. M. Baruch, Chairman

In your reply refer to —.

Washington, May 27, 1918

To dealers in and users of cotton linters:

For your information and guidance you are advised, on May 2, the price-fixing committee of the War Industries Board fixed a base price of \$4.67 per cwt. f. o. b. points of production for all linters then on hand and to be produced until August 1, 1919. This action was made necessary by the increasing requirements due to war conditions. While no shortage of linters exists at the present moment, the operation of the new Government powder plants now nearing completion will about double the linter requirements; therefore, it becomes imperative that all existing stocks and all future production of linters be requisitioned for explosive purposes.

[fol. 7] The armies and navies of the United States and the Allies must be furnished an ample supply of ammunition, and any diversion of linters, irrespective of grade, to other channels would handicap the Government to just that extent.

All linters that have not voluntarily been tendered the Government at the price fixed for munition linters will be commandeered as the actual needs develop, and the commandeering process itself will give ample opportunity for the owners of special high-grade linters cut for mattresses and other industries to establish the value of their product in each individual case.

It is the purpose of this section to help out the mattress and other manufacturers using cotton linters in rounding out their business and completing existing contracts for finished products, but each case will necessarily have to be handled separately and adjusted on its merits.

We inclose herewith a questionnaire which we will ask that you fill out and return to George R. James, cotton and cotton products

section, War Industries Board, Room 917, Council of National Defense, Washington, D. C., at the earliest possible moment.

Yours very truly, Geo. R. James, Chief Cotton and Cotton Products Section.

EXHIBIT "B" TO AMENDED PETITION

(Copy)

War Industries Board

[fol. 8]

B. M. Baruch, Chairman

In your reply refer to mattress linter.

Washington, July 10, 1918.

To manufacturers of, dealers in, and users of cotton linters:

It having been deemed necessary for the Government to take over all the cotton linters now in existence, irrespective of grade or ownership, arrangements have now been made for the purchase of mattress or high grade linters which were produced prior to May 2nd, 1918, at the actual value of the commodity.

Through the cooperation of the U. S. Bureau of Markets and cotton and cotton products sections of the War Industries Board, three samples of linters have been selected representing types of linters on which prices have been suggested which are considered fair and equitable, both to owners of the linters and the Government.

The Du Pont American Industries Co., of Wilmington, Del., as the purchasing agency for the Ordnance Department is authorized to buy the linters as follows: A type of linters designated as "A" grade, suggested price 10c per pound. A type of linters designated as "B" grade, suggested price 7c per pound. A type of linters designated as "C" grade, suggested price 5½c per pound. All prices to be f. o. b. points of location. It is suggested that by agreement between the inspector acting for the purchasing agency of the Ordnance Department and the owners of the linters purchase can be made on the basis above suggested, but it must be understood that [fol. 9] the prices named are not obligatory or by authority of the War Industries Board, but are, in the opinion of the representatives of the U. S. Bureau of Markets and the cotton and cotton products section of the War Industries Board, acting as a committee, fair and just prices that should be paid for these three selected grades.

In the event agreement cannot be reached between the inspector and the owner, then the Ordnance Department may exercise its right to commandeer, which process gives the owners opportunity to establish the actual value of their commodity in each instance. All linters below the grade represented by type "C" shall be considered munition linters, and the price of \$4.76 per hundred pounds f. o. b. points of production established as of May 2nd, 1918, by the price-fixing com-

mittee of the War Industries Board shall apply. There shall be only one grade (munition type) of linters manufactured during the 1918-19 season, and all purchases will be made by the Procurement Division of the U. S. Ordnance Department.

Yours very truly, (Signed) Geo. R. James, War Industries Board, Chief Cotton and Cotton Products Section.

[fol. 10] III. GENERAL DEMURRER TO AMENDED PETITION—Filed March 27, 1923

Defendant demurs to the amended petition in this case for the reason that the facts set forth therein do not furnish any grounds for relief.

Robert H. Lovett, Assistant Attorney General. W. F. Norris, Special Assistant to the Attorney General.

IV. SUBMISSION OF CASE ON DEMURRER

On April 23, 1923, the general demurrer to plaintiff's amended petition was submitted without argument by Mr. W. F. Norris, for the defendant, and by Mr. Raymond M. Hudson, for the plaintiff.

[fol. 11] V. ORDER DISMISSING PETITION—Entered Apr. 30, 1923

This cause coming on to be heard was submitted upon the demurrer to the amended petition. On consideration whereof, the court is of opinion that the demurrer is well taken. It is therefore adjudged and ordered by the court that the defendant's demurrer to the amended petition be, and the same is hereby, sustained and the petition is dismissed.

MEMORANDUM

(1) The averments do not show a contract, express or implied, whereby the Government agreed to pay for the linters.

(2) There was no taking or appropriation by the Government of the plaintiff's linters.

(3) The plaintiff refused the Government's price for its linters and "held same to be commandeered," and this course was not adopted by the Government.

(4) The order "releasing all linters" gives no right of action.

[fol. 12] VI. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On June 8, 1923, the plaintiff filed a motion for a new trial. On July 2, 1923, the court overruled said motion.

VII. PLAINTIFF'S APPLICATION FOR APPEAL—Filed July 5, 1923

Now comes the plaintiff and moves the court to allow it an appeal to the Supreme Court of the United States from a judgment of the Court in and on April 30, 1923, to which a new trial was denied July 2, 1923.

Raymond M. Hudson, Attorney for Plaintiff.

VIII. ORDER OF COURT ALLOWING APPEAL—Entered July 9, 1923

It is ordered by the court that the plaintiff's application for appeal be and the same is allowed.

By the Court.

[fol. 13] COURT OF CLAIMS OF THE UNITED STATES

[Title omitted]

CLERK'S CERTIFICATE

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the submission of case on demurrer to the amended petition; of the order of the court dismissing the amended petition with memorandum; of the plaintiff's application for appeal to the Supreme Court of the United States; of the order of the Court allowing appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Twelfth day of July, A. D., 1923.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal Court of Claims.)

Endorsed on cover: File No. 29,796. Court of Claims. Term No. 486. United States Bedding Company, appellant, vs. The United States. Filed August 6th, 1923. File No. 29,796.